RealNetworks Inc v. MLB Advanced Media LP Doc. 34

Honorable Franklin D. Burgess

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT TACOMA

REALNETWORKS, INC., a Washington corporation,

Plaintiff,

v.

MLB ADVANCED MEDIA, L.P., a Delaware limited partnership,

Defendant.

Case No. CV04-0511FDB

JOINT REPORT – DISCOVERY PLAN

JOINT REPORT REGARDING DISCOVERY PLAN

Pursuant to Fed. R. Civ. P. 26(f), plaintiff RealNetworks, Inc. and defendant MLB Advanced Medial, L.P. have met and conferred to consider the nature and basis of their claims and defenses and the possibilities for a prompt settlement of the case and to develop a proposed discovery plan. The parties submit this report regarding their proposed discovery plan and proposed case scheduling order, a statement of agreements reached and the parties' positions on matters as to which they disagree.

Fed. R. Civ. P. 26(a)(1) – Initial Disclosures

Pursuant to this Court's Order, dated March 11, 2004, initial disclosures required under Fed. R. Civ. P. 26(a) (1) must be made on or before June 25, 2004. Initial disclosures have been made by both parties.

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Fed. R. Civ. P. 26(f)(2) – Subjects of Discovery and Schedule

Subjects of Discovery

The subjects of discovery are those defined in the Complaint, the Answer and Counterclaim, and Answer to Counterclaim and any amended complaint and answer.

Proposed Discovery Schedule

Fact Discovery Cutoff Date: Fact discovery shall be completed no later than **September 1, 2004**. In the event that either party believes that expert reports provided by the other party after September 1, 2004 disclose opinions with respect to which additional fact discovery is needed, such party has the right to petition the Court for additional fact discovery.

Expert Discovery:

a. **Expert reports:**

Plaintiff shall identify its experts and provided the Fed. R. Civ. P. 26(a)(2) reports of those experts to defendant no later than **October 1, 2004.**

Defendant shall identify its experts and provide the Fed. R. Civ. P. 26(a)(2) reports of those experts to plaintiff no later than **November 1, 2004.**

Plaintiff shall identify its rebuttal experts and provide the Fed. R. Civ. P. 26(a)(2) reports of those experts to defendant no later than **December 1, 2004.**

b. **Expert depositions:** Expert depositions shall be completed no later than **January 21, 2005.**

Fed. R. Civ. P. 26(f)(3) – Discovery Limitations

Interrogatories: The number of interrogatories will be limited to 35, including subparts.

Requests for Admission: Requests for admission may be served without limit.

Depositions: The parties will be limited 50 hours of party depositions, 25 hours of non-party depositions and 6 hours of expert depositions for each expert designated by the other side.

Motions to Compel: Any motion to compel fact discovery must be filed before **October 1, 2004.** Any motion to compel expert discovery must be filed before **February 20, 2005**. These deadlines may only be altered by Order of the Court, for good cause shown.

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Document Production:

With respect to any hard copy documents, both parties will Bates label all documents prior to production and to preserve the originals of any copies that are produce for inspection. The party requesting documents will pay for the copies unless the producing party selects the copy company, in which case the requesting party pays only what it would have been charged by the company it would have selected. Copies must be organized and stapled to conform to the originals.

With respect to electronic document production, both parties will identify the documents with a Bates label prior to production and preserve the original records from which any documents are produced.

Initial privilege logs will be produced within 30 days of the parties' first production of documents and will be seasonably amended as additional documents are produced. Privileged documents created after the filing of the Complaint may be excluded from the privilege log.

Protective Order: Pursuant to the Court's Order of March 26, 2004, plaintiff is to submit to the Court a proposed Protective Order covering the filing of materials under seal. In addition, the parties anticipate that the Protective Order will cover the treatment of confidential and proprietary information discovered from parties and third-parties during the course of discovery in this case.

Fed. R. Civ. P. 26(f)(4) – Other Matters

Joinder: Additional parties must be joined no later than **July 1, 2004**.

Pleading Amendments: Subject to the requirements of Fed. R. Civ. P. 15, both parties will be required to amend their pleadings to assert new causes of action or defenses no later than **July 1, 2004**, except that defendant will have two additional weeks to amend for purpose of responding to any amendments made by plaintiff within the two weeks prior to July 1, 2004.

Dispositive Motions: Dispositive motions shall be filed on or before **February 20, 2005.**

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Witness and Exhibit Lists: The parties shall file final lists of witnesses, exhibits and deposition designations pursuant to Fed. R. Civ. P. 26(a)(3) on **March 4, 2005** or within thirty (30) days of the Court's final rulings on dispositive motions, whichever is later. The parties shall serve objections to the foregoing and deposition counter-designations within fifteen (15) days after receipt of the other party's designations.

Final Pre-Trial Conference & Trial: Subject to the timing of the Court's final rulings on dispositive motions, the parties will be prepared for a final pre-trial conference in May 2005 and will be ready for trial in June 2005. The estimated length of trial is two weeks.

DATED this 2nd day of July, 2004.

Respectfully submitted,

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